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DRAFT BERNALILLO COUNTY WATER CONSERVATION ORDINANCE

AN ORDINANCE ENACTING A NEW CHAPTER OF THE BERNALILLO COUNTY CODE REGULATING WATER WASTE, OUTDOOR WATER USE, AND NEW DEVELOPMENT TO CONSERVE WATER IN BERNALILLO COUNTY

Section 1 PURPOSE AND INTENT

To implement portions of the Bernalillo County Water Conservation Plan in order to: reduce per capita water use; encourage responsible use of water; reduce water waste; and preserve water supplies within Bernalillo County for the health safety and welfare of County residents.

Section 2 APPLICABILITY

This ordinance applies to all persons, entities, and properties within unincorporated Bernalillo County. Where a conflict exists between any of the regulations or limitations prescribed in this ordinance and any other regulations applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

Section 3 PENALTY FOR VIOLATION OF ORDINANCE

Violations of this ordinance are punishable as provided in section 1-6 of this Bernalillo County Code.

Section 4 ADMINISTRATION

The Bernalillo County Manager is responsible for the administration of this ordinance. Powers assigned to the County Manager may be delegated by the County Manager to other appropriate County divisions and departments as deemed necessary to carry out the requirements of this ordinance. The County Manager or his/her designee is hereby authorized and directed to enforce all of the provisions of this ordinance. The County Manager or his/her designee shall have the power to render interpretations of this ordinance and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this ordinance. The County Manager or his/her designee shall establish administrative procedures to carry out the intent and purpose of this ordinance. The County Manager shall recommend changes in fines to the Board of County Commissioners for adoption by resolution.

Section 5 DEFINITIONS

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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1 ATHLETIC FIELD. Turf area with which is used to hold athletic events or practices.
2 Parks that have substantial areas used for athletic events or practices will be considered
3 Athletic Fields.

4
5 BUBBLERS. Irrigation heads which deliver water directly to the soil adjacent to the
6 heads.

7
8 CURBSIDE CAR WASHING. Car washing near a public right-of-way.

9
10 DRIP IRRIGATION. Low pressure, low volume irrigation applied slowly, near or at
11 ground level to minimize runoff and loss to evaporation.

12
13 DROUGHT. An extended period of low precipitation in an area which occurs in
14 sufficient length or magnitude to cause water shortages and/or crop damage.

15
16 DROUGHT LEVEL. Level of drought as defined the Albuquerque Bernalillo County
17 Water Utility Authority Drought Management Strategy. Four drought levels include;
18 Drought Advisory, Drought Watch, Drought Warning, and Drought Emergency.

19
20 (1) **Drought Advisory** occurs when 10,000 acre-feet/year of excess aquifer
21 pumping is expected and relies on voluntary conservation

22 (2) **Drought Watch** occurs when 20,000 acre-feet/year of excess aquifer pumping
23 is expected and relies on mandatory conservation

24 (3) **Drought Warning** occurs when 30,000 acre-feet/year of excess aquifer
25 pumping is expected and relies on mandatory conservation

26 (4) **Drought Emergency** occurs when 40,000 acre-feet/year or 30,000 acre-feet
27 for 2+ yrs of excess aquifer pumping is expected and includes water rationing

28
29 ENERGY STAR. A United States government-backed program that provides an energy
30 performance rating system for household appliances. Appliances with the Energy
31 Star label attached have met energy efficiency guidelines set by the United States
32 Environmental Protection Agency and the United States Department of Energy.

33
34 EVEN-NUMBERED PROPERTIES. Properties whose official street address ends in an
35 even number. Landscaped areas associated with a building will use the number of that
36 building as their address. Only one address shall be used for a large landscaped area
37 associated with one building or activity, even if the landscaped area is broken into many
38 separate subareas.

39
40 FUGITIVE WATER. The flow or release of any water from any activity or process onto
41 adjacent property or the public right-of-way.

42
43 HAND WATERING. The application of water for irrigation purposes through a hand-
44 held hose, including hoses moved into position by hand and left to flow freely or through
45 a shut-off nozzle.

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1 HIGH EFFICIENCY TOILET. A toilet fixture that flushes a maximum volume of 1.3
2 gallons (4.9 Liters) per flush or less. High Efficiency Toilets may include dual-flush
3 toilets. Dual Flush toilets must not exceed 1.1 gallons per flush for liquids and 1.6
4 gallons per flush for solids.

5
6 HIGH-WATER-USE PLANTS. Plants that are classified as high-water-use on a list
7 approved by Bernalillo County.

8
9 HIGH-WATER-USE TURF. Turfgrass that is classified as high-water-use on a list
10 approved by Bernalillo County.

11
12 INFILTRATION RATE. The amount of water absorbed by the soil per unit of time,
13 usually expressed in inches per hour.

14
15 LOW-WATER-USE PLANTS. Plants that are classified as low-water-use on a list
16 approved by Bernalillo County.

17
18 MEDIUM-WATER-USE PLANTS. Plants that are classified as medium-water-use on a
19 list approved by Bernalillo County.

20
21 NEW DEVELOPMENT. Any master plan application, subdivision application, special
22 use request, zone change request, conditional use request, variance request or building
23 permit issued for new construction. New Development does not include additions to
24 existing single family residential buildings, except where the addition is a stand-alone
25 structure with water and waste water service.

26
27 NEWLY SEEDED. Seed planted in a prepared area with the intent of establishing a turf
28 area.

29
30 ODD-NUMBERED PROPERTIES. Properties whose official street address ends in an
31 odd number. Large landscaped areas associated with a building will use the number of
32 that building as their address. Only one address shall be used for a large landscaped area
33 associated with one building or activity, even if the landscaped area is broken into many
34 separate subareas.

35
36 PUBLIC RIGHT-OF-WAY. The area of land acquired or obtained by the city, county, or
37 state primarily for the use of the public for the movement of people, goods, vehicles, or
38 storm water. For the purposes of this ordinance the public right-of-way shall include
39 sidewalks, curbs, streets, and storm water drainage inlets.

40
41 RESTRICTED PLANTS. Plants that are classified as restricted on a list approved by
42 Bernalillo County.

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44 RESPONSIBLE PARTY. The owner, tenant, manager, supervisor, or person in charge of
45 the property, facility, or operation during the period of time the violation(s) is observed.

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1 RUNOFF. Precipitation, snowmelt, or irrigation water that is not absorbed by the soil and
2 moves across ground surfaces.

3
4 SPRAY IRRIGATION. The application of water to landscaping by means of a device
5 that projects water through the air in the form of small particles or droplets.

6
7 WATER UTILITY AUTHORITY. The Albuquerque Bernalillo County Water Utility
8 Authority or its authorized agent. It includes the water and wastewater facilities and all
9 operations and management of such facilities necessary to provide water and wastewater
10 service.

11
12 WATER UTILITY AUTHORITY CUSTOMER. Any person, association, corporation or
13 other entity receiving Albuquerque Bernalillo County Water Utility Authority water
14 service.

15
16 WATER WASTE. The nonbeneficial use of water. Nonbeneficial uses include but are not
17 restricted to:

- 18
19 (1) Landscape irrigation water applied in such a manner, rate and/or quantity that
20 it causes runoff onto adjacent property or public right-of-way;
21 (2) Landscape irrigation water which leaves a sprinkler, sprinkler system, or other
22 application device in such a manner or direction as to spray onto adjacent
23 property or public right-of-way;
24 (3) Water provided through the Middle Rio Grande Conservancy District or
25 community acequia systems for irrigation purposes applied in such a manner, rate
26 and/or quantity that it overflows the area being watered and runs onto adjacent
27 property or public right-of-way;
28

29 **Section 6 OUTDOOR WATERING RESTRICTIONS**

30
31 The restrictions in this section apply to all properties within unincorporated Bernalillo
32 County.

33
34 (A) All spray irrigation during the period beginning on April 1 and ending on October 31
35 of each year must occur between 7:00 p.m. and 11:00 a.m. This restriction shall not apply
36 to drip irrigation and low precipitation bubblers, hand watering, or watering of
37 containerized plants and plant stock.

38
39 (B) Shutoff nozzles are required on any hoses used for hand watering, car washing or
40 other outdoor uses.

41
42 (C) Under the four Drought Levels defined in the Water Utility Authority Drought
43 Management Strategy, the County may, at its sole discretion, require that residents water
44 every other day. All even-numbered properties shall water only on Sunday, Tuesday and
45 Thursday. All odd-numbered properties shall water only on Monday, Wednesday and
46 Saturday. The County may require that residents water no more than one, two, or three
47 time(s) per week. The County may also prohibit curbside car washing.

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(D) Restrictions in divisions (A) and (C) above do not apply to the following:

- (1) Outdoor irrigation necessary for the establishment of newly sodded lawns and landscaping within the first 30 days of planting upon the issuance of a Watering Restriction Exemption;
- (2) Outdoor irrigation necessary for the establishment of newly seeded lawns within the first 60 days of planting upon the issuance of a Watering Restriction Exemption.
- (3) Irrigation necessary for one day only where treatment with an application of chemicals requires immediate watering to preserve an existing landscape or to establish a new landscape;
- (4) Water used to control dust or compact soil;
- (5) Attended watering systems that have one or more repair or maintenance personnel present at the irrigated zone being serviced for purposes of inspecting system condition and function and/or repairing or maintaining the watering system;
- (6) Water provided through the Middle Rio Grande Conservancy District or community acequia systems for irrigation purposes.

Section 7 EXEMPTIONS

Exemptions to Section 6 (Watering Restrictions)

(A) Administrative exemptions to the restrictions in Section 6, may be issued by the County Manager or his/her designee, only for the purposes of installing or retrofitting landscaping, provided that the general intent of this ordinance has been met.

(B) Watering Restriction Exemptions may be issued for a period not to exceed 60 days to establish a Newly Seeded turf area on Properly Prepared Ground which has been cultivated and prepared to sow turfgrass seed to establish a new turf area..

(C) Watering Restriction Exemptions may be issued for a period not to exceed 30 days to establish newly sodded turf and/or landscape.

(D) Watering Restriction Exemptions may be issued for a period not to exceed 45 days to establish inter-seeded areas within an established turf area.

(E) An application for a temporary exemption shall be filed with the County Manager or his/her designee on a form and accompanied by such data and information as may be prescribed.

(F) The request for temporary exemption shall contain the following information:

- (1) Specific exemption, or exemptions requested;
- (2) Duration of time for requested exemption;
- (3) Address of location where exemption is requested;

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- (4). Proposed location on premises of the exemption is requested;
- (5). Previous temporary exemptions;,
- (6) Physical size and dimensions of area where exemption is requested;.
- (7) Other data and information to support the need for the exemption requested.

Section 8 WATER WASTE.

The restrictions in this section apply to all properties within unincorporated Bernalillo County

(A) No person, firm, corporation, or municipal or other government facility or operation shall cause or permit any water waste.

(B) No person, firm, corporation, or municipal or other government facility or operation shall cause or permit the flow of fugitive water onto adjacent property or public right-of-way.

(C) The restrictions in divisions (A) and (B) of this section do not apply to the following:

- (1) Storm runoff allowed under provisions of the City of Albuquerque or Bernalillo County drainage ordinances as currently adopted or subsequently amended;
- (2) Flow resulting from temporary water supply system failures or malfunctions. These failures or malfunctions shall be repaired within 24 hours of notification and the system shut off until repair can be completed;
- (3) Flow resulting from temporary irrigation ditch failures or malfunctions. These failures or malfunctions shall be repaired immediately and the irrigation ditch shut off until repair can be completed;
- (4) Flow resulting from firefighting or routine inspection of fire hydrants or from fire training activities;
- (5) Water applied as a dust control measure;
- (6) Water applied to abate spills of flammable or otherwise hazardous materials, where water is the appropriate methodology;
- (7) Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available;
- (8) Flow resulting from routine inspection, operation, or maintenance of a utility water supply system;
- (9) Flow resulting from well testing, sampling, or monitoring conducted as part of a hydrologic study or well test.
- (10) Water used in the course of installation or maintenance of traffic flow control devices;
- (11) Water used for construction or maintenance activities where the application of water is the appropriate methodology and where no other practical alternative exists.

Section 9 APPEALS

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1 (A) Appeal of Section 7 (Exemptions), A responsible party may appeal exemption
2 application decisions for Section 7 to the County Manager or his/her designee by filing an
3 appeal within 15 days of receiving a exemption decision. The exemption decision shall
4 provide information on the right to appeal and the procedures to follow.

5
6 (B) The appeal shall identify the property and state the grounds of appeal together with
7 all material facts in support thereof. An appeal filing fee of \$50 will be required to
8 accompany the appeal application. The appeal filing fee shall be refunded in the event
9 the exemption decision is not upheld by the County Manager or his/her designee. When
10 a hearing is requested, the County Manager or his/her designee shall send written notice
11 by certified mail, return receipt requested, to the appellant of the time and place of the
12 hearing.

13
14 (C) At the hearing the appellant shall have the right to present evidence as to the alleged
15 facts upon which the County Manager or his/her designee based the determination of the
16 exemption denial and any other facts which may aid the County Manager or his/her
17 designee in determining whether an exemption should be granted.

18
19 (D) The County Manager or his/her designee shall, within seven working days following
20 the hearing, issue a written decision specifying the results of the appeal.

21
22 (E) If an appeal is received within the 15 business day time limit, the County Manager or
23 his/her designee shall hold a hearing within 15 business days after receipt of the request.
24 The County shall, in writing, notify the person who requested the hearing of the date,
25 time, and place of the hearing. The County shall, in writing, notify all persons who were
26 sent notice of the exemption decision of the date, time and place of the hearing. In the
27 hearing, the burden of proof shall be upon the person who requested the appeal.

28
29 (F) Hearings shall be held at the offices of the County or other public facility.

30
31 (G) The hearings shall be conducted so that all relevant views, arguments and testimony
32 are fairly presented without undue repetition. The County Manager or his/her designee
33 shall allow the County, the applicant and the person who requested the hearing to call and
34 examine witnesses, to submit written and oral evidence and arguments, to introduce
35 exhibits, and to cross-examine persons who testify. The rules of civil procedure and the
36 rules of evidence shall not apply.

37
38 (H) Based upon the evidence presented at the hearing, the County Manager or his/her
39 designee shall sustain, modify, or reverse the action of the County. The County
40 Manager's or his/her designee's decision shall be in writing, and a copy of the decision
41 shall be sent to the applicant and the person who requested the hearing. The decision shall
42 serve as the final decision of the County.

43 44 **Section 10 ENFORCEMENT**

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(A) The County Manger or his/her designee shall be responsible for the enforcement of this ordinance. The County Manager may prescribe policies, rules, or regulations to carry out the intent and purposes of this ordinance.

(B) Water Customers of the Water Utility Authority shall not be subject to enforcement of the same violation by both Bernalillo County and the Water Utility Authority.

Section 11 PLANTING RESTRICTIONS FOR NEW DEVELOPMENT

This section applies to new development on all properties in Bernalillo County except for those zoned A-1 Agricultural with access to water provided through the Middle Rio Grande Conservancy District or community acequia systems for irrigation purposes.

(A) All properties other than parks and golf courses shall not use high water use turf or other restricted plants on more than 20% of the landscape area. Parks and golf courses; must follow section 15 (Water Budgets for Parks and Golf Courses) of this ordinance.

(B) Single family residential properties shall not use high water use turf or other restricted plants on more than 20% of the landscape area, except;

(1) In the event that 20% of the landscape area is greater than 3,000 square feet, high water use turf and other restricted plants shall not be used on more than 3,000 square feet of the landscape area;

(2) In the event that 20% of the landscape area is less than 300 square feet, high water use turf and other restricted plants may be used on up to 300 square feet of the landscape area.

Section 12 DESIGN REGULATIONS FOR NEW DEVELOPMENT

This section applies to all new development, and to expansions or major renovations at existing County owned parks, County-owned athletic fields, and non-County owned golf courses.

(A) With the exception of temporary irrigation systems needed to establish low water use plants, spray irrigation shall not be used on slopes greater than four feet of horizontal distance per one foot vertical change (4:1).

(B) All existing disturbed slopes and all man-made slopes shall receive erosion control from plantings and/or terracing. Concrete, asphalt or any other water and air impervious paving/cover will be allowed only where it is the most appropriate methodology and where no other practical alternative exists.

(C) Plants that require spray irrigation or mowing shall not be used in street medians, except that spray irrigation may be used in street medians for up to 36 months where the primary objective is to reclaim disturbed areas with low water use plants.

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(D) Spray irrigation shall not be used to apply water to any area within eight feet of a street curb or storm sewer inlet. These areas may be irrigated by drip, bubbler, soaker or sub-surface irrigation systems.

(E) Sprinkler heads shall be installed at least eight inches away from impermeable surfaces.

(F) Spray irrigation shall not be used in areas less than ten feet in any dimension excepting within back or side yards of residential properties, or where such an area is contiguous with adjacent property so that the dimension totals ten feet minimum. Within parking lots no spray irrigation shall be used on any area less than 15 feet in any dimension. These areas may be irrigated by drip, bubbler, soaker or sub-surface irrigation systems.

(G) Any existing features should be evaluated for incorporation in design to include natural drainage, rock outcroppings, stands of native vegetation that can be protected, or detention areas where vegetation has grown and is being supported by nuisance flows or harvested water.

(H) The potential for using harvested water should be evaluated and, when practical, incorporated into landscape design. Such design shall be consistent with the requirements of all applicable local and state regulations.

(I) Ponds, fountains, wetlands, marshes, water features for wildlife habitat, functional holding ponds or other reservoirs shall not exceed 500 square feet or surface area unless approved by the County Manager or his/her designee. Multiple water features on the same property will be considered together to determine surface area. Flowing water used in fountains, waterfalls and similar features shall be recirculated. Pond designs shall be consistent with the requirements of all applicable local and state regulations.

Section 13 NEW RESIDENTIAL ALTERNATIVES

This section applies to all new one- and two-family dwellings and townhouses as regulated by the New Mexico Residential Building Code.

(A) Building permit applications for new one- and two-family dwellings and townhouses shall include a completed Water Conservation Measures Form certifying that at least one of the three alternative approaches listed in this section will be incorporated into the design and construction of the new dwelling.

(B) After January 1, 2010 a Water Conservation Measures Form certifying that at least two of the three alternative approaches listed in this section will be incorporated into the design and construction of the new dwelling.

Alternative Number 1. Install a hot water re-circulating system with a pump, a timer, and/or a thermostat. Copper water lines, if used in the system, shall be insulated in accordance with the New Mexico Energy Conservation Code.

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Alternative Number 2. Install any combination of two of the following items:
An Energy Star rated dishwasher.
An Energy Star rated clothes washing machine.
High efficiency toilets in all bathrooms

Alternative Number 3. Install plumbing stub-out for a graywater system to collect gray water from a minimum of one bathroom and one washing machine in accordance with all applicable local and state regulations.

(B) A County-approved copy of the Water Conservation Measures Form shall be posted at the water heater by the time of the Building final inspection.

Section 14 NEW DEVELOPMENT OTHER THAN SINGLE- FAMILY [Effective 1/1/2010]

This section applies to all new development in Bernalillo County except single-family housing.

(A) All new development other than single-family in Bernalillo County shall install High Efficiency Toilets in all bathrooms.

(B) All new development with a building footprint of 10,000 square feet or greater other than single-family in Bernalillo County shall use one of the following alternatives to supply or supplement landscape irrigation.

Alternative 1. Development which is required to install a minimum of:

- a. two or more lavatories, and
- b. one or more drinking fountains, and
- c. two or more showers

under the provisions of the Bernalillo County Building Code minimum plumbing fixture requirements or has two or more outlets for laundry facilities shall install a gray water system in accordance with all applicable local and state regulations

Alternative 2 Use rainwater harvesting or low-impact development techniques including but not limited to:

- a. Curb cuts to direct runoff from roadways or parking lots to landscaped areas;.
- b. Direct runoff from impermeable surfaces to landscapes with water holding features;.
- c. Use cisterns to collect rainwater to be used on landscapes.

(C) All housing with two or more units shall have sub-metering for water service to all housing units.

Section 15 WATER BUDGETS FOR PARKS AND GOLF COURSES [Effective 1/1/2010]

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1 This section applies to all non-County owned golf courses, and to all non-County owned
2 parks and athletic fields.

3
4 (A) Parks and golf courses shall use medium and low water use plants as much as
5 possible. High water use turf or other restricted plants shall be allowed only in those
6 areas with heavy usage or foot traffic, such as athletic fields, playgrounds, and golf
7 course tees, greens, and fairways.

8
9 (B) All parks in the unincorporated area of Bernalillo County will be allowed up to 35
10 inches of water per acre of landscape area per year. Parks must report well and other
11 supplied water usage to the County on an annual basis. Any usage over the allowable
12 amount will be subject to the penalties described in Section 3 of this ordinance. Usage
13 will be calculated on a per individual park basis and shall include all water supplies.

14
15 (C) All golf courses in the unincorporated area of Bernalillo County will be allowed up to
16 40 inches of water per acre of landscape area per year. Golf courses must report well and
17 other supplied water usage to the County on an annual basis. Any usage over the
18 allowable amount will be subject to the penalties described in Section 3 of this ordinance.
19 Usage will be calculated on a per individual golf course basis and shall include all water
20 supplies.

21
22 (D) Athletic fields in the unincorporated area of Bernalillo County will be allowed up to
23 45 inches per acre of landscape area per year. Athletic fields must report well and other
24 supplied water usage to the County on an annual basis. Any usage over the allowable
25 amount will be subject to the penalties described in Section 3 of this ordinance. Usage
26 will be calculated on a per individual athletic field basis and shall include all water
27 supplies.

28
29 (E) For all parks, golf courses and other facilities with greater than ten acres of restricted
30 plants, and developed after the effective date of this section, the owner or developer shall,
31 when available and economically feasible, use reclaimed wastewater.

32 (F) The landscaped area for new golf courses shall not exceed 90 acres per 18 holes or 45
33 acres per 9 holes.

34 35 **Section 16 LARGE RESIDENTIAL REQUIREMENTS [Effective 1/1/2013]**

36
37 This section applies to all new single-family dwellings and townhouses as regulated by
38 the New Mexico Residential Building Code that have a planned heated floor space of
39 3500 square feet or greater.

40
41 (A) All installed toilets shall be High Efficiency Toilets from a list approved by
42 Bernalillo County

43
44 (B) All installed water using appliances shall be energy star and rated as water efficient
45 from an approved list.

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(C) A hot water re-circulating system with a pump, a timer, and/or a thermostat shall be installed. Copper water lines, if used in the system, shall be insulated in accordance with the New Mexico Energy Conservation Code

(D) Plumbing stub-outs for a graywater system to collect all gray water from all bathrooms and washing machines. Graywater plumbing shall be installed in accordance with all applicable local and state regulations.

Section 17 GRAYWATER, NON-POTABLE WATER AND RAINWATER HARVESTING REQUIREMENTS [Effective 1/1/2013]

This section applies to all non-County owned golf courses, and to all non-County owned parks and athletic fields and to all new development which have a planned landscape area over 20,000 square feet.

(A) Graywater, non-potable water, and/or rainwater harvesting shall be used to supply and or supplement all landscapes over 20,000 square feet by using one or combination of the following;

1. Graywater systems installed in accordance with all applicable local and state regulations.

- 2 Non-Potable water shall be used where available. Availability is determined by an agreement to serve from a non-potable provider and ability to connect within 1000 ft.

- 3 Rainwater harvesting or low-impact development techniques including but not limited to:

- a. Curb cuts to direct runoff from roadways or parking lots to landscaped areas.

- b. Direct runoff from impermeable surfaces to landscapes with water holding features.

- c. Use cisterns to collect rainwater to be used on landscapes.